IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.2111.OF 2003

Prabhakar Ganpat Patil. ....Petitioner.

Vs.

Bhiku Sakharam Shewade. ....Respondent.

.....

Mr.Sandesh D.Patil for the Petitioner.

Mr.R.D. Suryawanshi for the Respondent.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 21, 2006.

P.C. :

The Petitioner has challenged the order dated 30th January 2001 passed by the Trial Court. The Respondent instituted a suit against the Petitioner for the recovery of rent and possession of the premises in dispute. It appears that the Respondent preferred an application under Section

11(4) of the Bombay Rent Act, 1947,seeking directions to the Petitioner to deposit rent in respect of the premises. That application is stated to have been dismissed on 27th October 1999. Another application was preferred by the Respondent on 3rd January 2000 and it was stated that the application was again dismissed on 18th January 2000. One more application was moved on 20th January 2001 in which the Trial Court passed an order directing the Petitioner to deposit the rent failing which the defence will be struck off. The order of the Trial Court has been called into question in these proceedings.

A Civil Revision Application was initially instituted for challenging the order of the Trial Court which was admitted for final hearing. However, in view of the amendment to the Code of Civil Procedure, the Civil Revision Application was held not to be maintainable and hence the present proceedings are instituted. The Petition was admitted on 12th June 2003 and, all further proceedings were stayed. A Civil Application (C.A.1539 of 2006) has been taken out by the

Respondent in which it has been stated that as a result of the interim order passed by this Court, the hearing of suit in which possession was sought on the ground of non-payment of arrears of rent and on the ground of the bonafide requirement of the landlord has been stayed. In the meantime, it is drawn to the notice of the Court that the tenant has not been paying rent and the landlord was required to pay the maintenance charges of the Society. Evidence has been partially recorded in the suit.

Counsel appearing on behalf of the Respondent has stated that the Respondent has no objection if the impugned order of the Trial Court is set aside with a view to facilitate the disposal of the suit.

In the circumstances, by consent of parties the impugned order of the Trial Judge dated 30th January 2001 below Exh.67 is quashed and set aside. The direction in regard to the striking off of the defence of the Petitioner shall in the circumstances be set aside. The parties shall

cooperate with the Trial Court in the expeditious disposal of the suit. The Trial Judge will endeavour to do so, subject to the exigencies of his own work, by the end of December 2006. The petition is accordingly disposed of.

.....